

PAPERS LAID ON THE TABLE.

Sri K. PUTTASWAMY (Minister for Municipal Administration).—Sri, I beg to lay on the Table a copy each of the following orders :—

(a) Order No. PLM 1 MLR 64 (3) dated 29th March 1965 (The Mysore Municipalities (Removal of Difficulties) (No. 1) Order, 1965.

(b) Order No. PLM 19 MLR dated 29th March 1965 (The Mysore Municipalities (Removal of Difficulties) (No. 2) Order, 1965. as required under sub-section (3) of section 283 of the Mysore Municipalities Act, 1964.

THE CODE OF CRIMINAL PROCEDURE (MYSORE AMENDMENT) BILL, 1965.

(Debate continued)

Sri V. S. PATIL (Belgaum II).—Sir, I have gone through the draft Bill and I feel that no major changes can be suggested so far as the bifurcation of these two branches, that is executive and judiciary.

I should like to say a few words regarding clause 50—new section that is added—section 476 (c)—power to order costs. This is a good provision. But a proviso has been added to this particular clause: A criminal court dealing with an application made to it for filing a complaint under section 476 or section 476-A, and a court dealing with an appeal under section 476-B and the High Court dealing with an application for revision shall have power to make such order as to costs as may be just.

I do not understand why the proviso has been added in the following terms :—

“Provided that no such order shall be made against the Government or any other public servant acting on behalf of the Government.”

Sir, that are two sides. A person who is the accused and a person who is prosecuting. It may be a private person or it may be the Government servant. If the Government has filed a case and if ultimately it has ended in acquittal, and if it had been filed by a private person, the court would have given the cost to the accused. Why the Government or their officers should be exempted? Because the offence is the same. The only condition is that the Government instead of a private person comes as the prosecutor. Why only a private person is to be punished by making him to pay some costs and why not Government? I should like to submit that just like in civil matters, where Government is a party, if the court considers that the Government is in the wrong, the court can award costs to this other side. Similarly, in the case of prosecutions or criminal courts also, the right must be given to the courts to award

(SRI V. S. PATIL)

costs. After all in Criminal cases the costs are not so heavy. In Civil matters the costs are very heavy and in criminal matter, it is practically negligible. If this power is given to the judiciary, I think the Government will try to persuade their servants not to harass any individual in view of this particular provision. That is why I should like to submit that this proviso is rather coming in the way of doing real justice to the public and depriving persons who are charged unnecessarily before the court of law. That is the only thing which I should like to add and I request the Hon'ble Minister that in Chapter proceedings also, the judicial magistrates courts may be given the preference rather the executive magistrates. If that line of thinking is followed by the Government I think much of the criticism which I have levelled last time will lose its force.

†Sri M. V. RAMA RAO (Minister for Law).—Sir, in regard to the observations made respecting clause 50 of the Amending Bill, proposing the insertion of a new section 476 (c) in the Code of Criminal Procedure, I would like to inform the Hon'ble Member and the House that this proposed clause is on the same lines of the provision found in the Code of Criminal procedure as amended in the Bombay State. One particular reason why the exemption from awarding of costs is provided for in respect of State Government or any public servant acting on behalf of the Government—the reason is this: When any such cost is awarded by the courts, whatever may be object, it is the tax-payer's money that will have to be spent. I am sure the Hon'ble Member Sri V. S. Patil would not like to be a party to making a provision which inflict that damage on the tax-payer.

MR. SPEAKER.—I put it to the vote of the House. The question is:

“That the Mysore Code of Criminal Procedure (Mysore Amendment) Bill, 1965, be taken into consideration.”

The motion was adopted.

MR. SPEAKER.—I find amendments beginning with clause 7. Therefore, I will put clauses 2 to 6 to the vote of the House.

The question is:

“That clauses 2 to 6, both inclusive, do stand part of the Bill.”

The motion was adopted.

Clauses 2 to 6, both inclusive, were added to the Bill.

CLAUSE 7.

† Sri G. V. GOWDA (Palyam).—Sir, I beg to move the following amendment to clause 7 :

“ That in line 2 of sub-section (1) of the proposed section 12, after the words ‘the State Government may’, the words ‘in consultation with the High Court’ shall be inserted.”

Mr. SPEAKER.—Amendment moved :

“ That in line 2 of sub-section (1) of the proposed section 12, after the words ‘the State Government may’, the words ‘in consultation with the High Court’ shall be inserted.”

Sri G. V. GOWDA.—Sir, the proposed amendment is with regard to the appointment of judicial magistrates by the Government. I have suggested that these appointments should be made in consultation with the High Court. In respect of special magistrates, sessions judges and other judicial officers, the Government makes the appointment in consultation with the High Court. So, to be in conformity with that policy, it is desirable that judicial magistrates have got to be appointed in consultation with the High Court. Even the original section contemplates the appointment of these judicial officers in consultation with the High Court. Therefore, it is absolutely essential to maintain the standard of the judiciary and the High Court should be consulted before the appointment is made. I do not think any harm is caused by accepting this amendment which is consistent with the original provision, and it is a simple amendment and I hope the Government will accept it.

Sri V. S. PATIL.—Sir, I should like to support the proposed amendment. I have heard the Hon'ble Minister saying that so far as the special magistrates and higher officers are concerned, they are drawn from the persons who are already in service and that is why the consultation of the High Court is quite essential. But, in the case of judicial magistrates, these persons may be appointed for the first time and it is likely that those persons will be selected in consultation with the P.S.C. just like our munsiffs at present. Sir, the choice that is made by the P. S. C. so far as these munsiffs and others are concerned is not in consonance with the spirit with which we are working as a democracy. My humble submission is that if judicial officers are excluded from the purview of the P. S. C. and if they are appointed in consultation with or the recommendation of the High Court, a tremendous good work will have been done. It is a sad thing to refer to the P. S. C. That is why I would like the Minister to accept.

The second thing is that munsiffs are practically on the same grade as the judicial magistrates—equal pay and they are inter-changeable. At least, in our part it is quite practical, where judicial magistrates are transferred as munsiffs or munsiffs are transferred to the cadre of Judicial Magistrates according to the number of years of service put in. Practically there is no distinction between a munsiff who is recruited

(SRI V. S. PATIL)

and a judicial magistrate who is recruited. The grades are the same. It is better that as far as possible, we should follow the policy of consulting the highest judicial body in the State for these appointments being made.

Sri M. V. RAMA RAO.—Sir, there appears to be a certain amount of.....

Mr. SPEAKER.—Mixing up of ideas.

Sri M. V. RAMA RAO.—Yes Sir. I am obliged to you for that phrase.....mixing up of ideas in regard to the use of the expression appointment. The expression appointment in this context would not really refer to what we have in mind by using the expression recruitment. While on this clause, I would like to bring to the notice of the Hon'ble Members that a notification has already been issued under article 237 of the Constitution as long back as on 22nd January 1959 in which it is said that in exercise of the powers conferred by article 237 of the Constitution of India, the Governor of Mysore is pleased to direct that the provisions of Chapter VI of Part 6 of the Constitution of India shall apply to all judicial magistrates in the State.....with effect from 3rd December 1957. Such a notification has already been issued. The other matter is that persons who are recruited to serve in the judiciary service of the State as munsiffs or as magistrates are appointed in accordance with the rules framed and issued under the authority of the Governor in consultation firstly with the High Court and secondly with the P.S.C. These rules are framed under the relevant article in the Constitution and there is not the slightest scope for any executive interference. If any such apprehension is entertained in the mind of any Hon'ble Member, I may assure that there is not the slightest scope for any kind of executive interference in the matter of recruitment to the judicial services of the State. If the expression appointment is understood in the sense of recruitment, that is the position. In regard to the use of the word appointment here, what is really meant is posting of officers to be judicial magistrates to be in charge of this or that court. In regard to this matter, by virtue of that notification, it is the High Court that makes the postings. Therefore there is no point and this amendment is not necessary.

Mr. SPEAKER.—Is the Hon'ble Member pressing the amendment?

Sri G. V. GOWDA.—If it is the intention of the Government to appoint or post these officers in consultation with the High Court, I may seek the leave of the House to withdraw.

Mr. SPEAKER.—I cannot take it. The Hon'ble Member should unconditionally withdraw or I will have to put it to the vote of the House.

Sri G. V. GOWDA.—Because of the assurance given I beg leave of the House to withdraw the amendment.

The amendment was, by leave of the House, withdrawn.

Mr. SPEAKER.—I will put clauses 7 and 8 to the vote of the House. The question is :

“That clauses 7 and 8 do stand part of the Bill.”

The motion was adopted.

Clauses 7 and 8 were added to the Bill.

CLAUSE 9.

Sri G. V. GOWDA.—Sir, I beg to move :

“That for the words ‘The High Court, subject to the approval of the State Government’ proposed to be substituted, the words ‘State Government in consultation with the High Court’ shall be substituted.”

Mr. SPEAKER.—Amendment moved :

“That for the words ‘The High Court, subject to the approval of the State Government’ proposed to be substituted, the words ‘State Government in consultation with the High Court’ shall be substituted.”

Sri G. V. GOWDA.—Sir, it is conceded in the Statement of Objects and Reasons that in order to realise the separation of the Executive from Judiciary, these amendments have been brought about. If really the separation of Executive from Judiciary is to be realised, the administrative control including postings, promotion, etc., should vest with the High Court. If that is to be so, these powers should be made to vest with the High Court. Therefore, I do not see how the wording in section 9 is proper. It is said :

“The State Government may, or, subject to the control of the State Government, the District Magistrate’, the words ‘The High Court, subject to the approval of the State Government’ shall be substituted.”

The original section says : “The State Government may or, subject to the control of the State Government, the District Magistrate, from time to time.....” So, Sir, the rule making power vests with the Government or the Magistrate. The phraseology that rules framed by the High Court is to be approved by the Government, to my mind, is not sound. Nowhere I have seen such a thing. It is said that the rules are to be framed by the Government in consultation with the High Court or subject to the approval of Government is something. Here, the rules are to be framed by the High Court and they have got to be approved by the Government. I do not think, it is desirable to have such a provision. This is not in conformity with the contemplation of having the Executive separated from the Judiciary. As the original section says, Government may frame rules with the consultation with the High Court. I do not think the High Court will agree to this amendment. Therefore, I request the Hon’ble Minister to accept my amendment.

Sri Member would only like to read the relevant provisions of the Criminal Procedure Code, his doubt in regard to this matter would have been resolved. He will see section 554.

"With the previous sanction of the State Government, any High Court may, from time to time, make rules for the inspection of the records of subordinate courts, and

(2) every High Court may from time to time, and with the previous sanction of the State Government, make rules for keeping all books, entries and accounts to be kept in all Criminal Courts subordinate to it, and for the preparation and transaction of any returns or statements to be prepared and submitted by such court."

The proviso reads—

"Provided that the rules and forms made and framed under this Section shall not be inconsistent with this Code or any other law in force for the time being."

That is the provision contained in Section 554. He will see that it speaks of the sanction of Government.....

Sri G. V. GOWDA.—Sir, if the Hon'ble Minister yields. I agree with....

Sri M. V. RAMA RAO.—Sir, I have understood what he has said. I do not like him to make a running commentary on my speech. I do not agree to his making any running comentary when I am making my speech.

Sri G. V. GOWDA.—I am not commenting. I said, if you could yield.

Sri M. V. RAMA RAO.—I do not yield. The Hon'ble Member will make up his mind when he will conclude his speech. He will also see, if he looks into the existing provision which has been made in the Code of Criminal Procedure as it is in Bombay area, the language used there is identical with the language used in this Amendment. I do not really see what objection he has to the rule making power being exercised by the High Court instead of Government. As a matter of fact, the expression "frame rules in consultation with the High Court" would vest the rule making power not with the High Court but with the Government, because the process of consultation would consist in sending a copy of the draft of rules for eliciting the views of the High Court if the State Government framed those rules. And having taken into cosideration such views, it would be for the Government to decide how the rules should be finally framed. On the contrary, the procedure envisaged in the present clause which is the same as the existing provision in the Criminal Procedure as existing in Bombay area makes it incumbent on the High Court to frame the rules. I may assure the Hon'ble Member that

far from the intention of sitting as a superior body, there is no question of Appellate jurisdiction in this matter. As a matter of fact, the High Court, the State Executive as well as the Legislature are all component parts of the same Organisation. It would be unreasonable if any one organ of the State to arrogate its powers which really do not belong to the particular domain in which the powers have to be exercised. Therefore, the rule making power is rightly vested with the High Court. Regarding the word, 'approval' instead of the word 'sanction', the word 'sanction' really means 'approval'. So, this is merely a formal matter. Hon'ble Member may dis-abuse his mind of any apprehension that the Government is anxious to impose any obstruction or difficulties in the way of High Court in framing any rules or discharging any function imposed on it.

SRI G. V. GOWDA.—Sir, I am agreeable for vesting of power with the High Court for framing of rules. It is nice. But, those rules to be approved by Government is something which cannot be reconciled in any manner. Whatever it may be in the Bombay area, we are not concerned. We are concerned with the Amendment. It makes crystal clear that the High Court will frame rules and the State Government will sit in judgment over it to say whether they are proper or not. Government means, it is the Law Secretary who sits over judgment over these rules framed by the High Court. Of course, Law Secretary including the Minister.

MR. SPEAKER.—For all we know, it may even be the Cabinet.

2-30 P.M.

SRI G. V. GOWDA.—Sir, the High Court consists of Judges of a rank higher than that of the Secretaries. That being so, we should not even suggest that Government should sit in judgment over the rules framed by the High Court. Whenever we enact laws, they must not only be dignified but also be approved by the highest judiciary. Not that I want to attribute any motive but the wording says that the High Court should frame the rules and the Government should approve them.

SRI M. V. RAMA RAO.—I am not accepting the amendment.

MR. SPEAKER.—The question is :

“That for the words ‘The High Court, subject to the approval of the State Government’ proposed to be substituted, the words ‘State Government in consultation with the High Court’ shall be substituted.”

Those who are in favour may say ‘Aye’. (Some Members said ‘Aye’) Those who are against may ‘Nay’. (A large number said ‘Nay’. Nays have it, Nays have it...

Sri T. N. MADAPPA GOWDA.—Sir, I claim a division.

(The Division bell rang)

Mr. SPEAKER.—Result of count is 'Ayes' 23 and 'Noes' 70.

The amendment is lost.

Mr. SPEAKER.—The question is :

“That clause 9 stand part of the Bill”.

The motion was adopted.

Clause 9 was added to the Bill.

Mr. SPEAKER.—The question is :

“That clauses 10 to 27, both inclusive, stand part of the Bill”.

The motion was adopted.

Clauses 10 to 27, both inclusive, were added to the Bill.

CLAUSE 28.

Sri G. V. GOWDA.—Sir, I beg to move :

“That for the words ‘any other Executive Magistrate’, proposed to be substituted, the words ‘Any other Executive Magistrate (not being a Taluk Magistrate)’ shall be substituted.”

Mr. SPEAKER.—Amendments moved :

“That for the words ‘any other Executive Magistrate’, proposed to be substituted, the words ‘any other Executive Magistrate (not being a Taluk Magistrate)’ shall be substituted.”

Sri G. V. GOWDA.—Sir, this section deals with the power to issue orders under section 144. Even as it is, the Third Class Magistrate is not being empowered to take action under section 144. Now, there are two classes of Executive Magistrates, namely, the Sub-Divisional Magistrate with first-class powers and the other class is the First Class, Second Class and the Third Class Magistrates. Probably, the Tahsildar is to be vested with the powers of a Third Class Magistrate. By vesting the Tahsildar with these powers, can we expect better justice. As matters stand today, the Third Class Magistrates, whether judicial or Executive, have not been empowered to take action under this section. So, to vest these powers now in Executive Magistrates is highly improper; it will not safeguard the interests of the people at large. I therefore request the Hon'ble Minister to see that the existing provision may be retained as it is.

Sri M. V. RAMA RAO.—Sir, the Hon'ble Member will see from clause 4 of the Bill that provision has been made in Section 6A, as inserted by clause 4, providing for classes of Magistrates. It reads thus:

“There shall be the following classes of Magistrates, namely :—

I. Judicial Magistrates :—

- (1) Magistrates of the First Class ;
- (2) Magistrates of the Second Class ;
- (3) Magistrates of the Third Class ;
- (4) Special Judicial Magistrates.

II. Executive Magistrates—

- (1) District Magistrates ;
- (2) Sub-Divisional Magistrates ;
- (3) Taluk Magistrates ;
- (4) Special Executive Magistrates.”

Now, it is suggested that the Taluk Magistrate should be excluded from the category of any other Executive Magistrate who may be empowered under section 144 to exercise the powers under that section. The ordinary Executive Magistrate as categorised in section 6A, inserted by clause 4, includes the Taluk Magistrate, and to take away this Taluk Magistrate would leave the District Magistrate and the Sub-Divisional Magistrate to exercise the power under section 144. To exclude them from the Executive Magistrates would be to make that clause its inoperative. So, I am unable to accept that amendment.

Mr. SPEAKER.—The question is :

“That in clause 28 for the words ‘any other Executive Magistrate’, proposed to be substituted, the words ‘any other Executive Magistrate (not being a Taluk Magistrate)’ shall be substituted.”

The amendment was negatived.

Mr. SPEAKER.—The question is :

“That clauses 28 to 49, both inclusive, stand part of the Bill.”

The motion was adopted.

Clauses 28 to 49, both inclusive, were added to the Bill.

CLAUSE 50.

Sri G. V. GOWDA.—I beg to move the following amendment :

“That the proviso to the proposed section 476C shall be deleted.”

Mr. SPEAKER.—Amendment moved :

“That the proviso to the proposed section 476C shall be deleted.”

Sri G. V. GOWDA.—This section deals with the power of the criminal courts to order as to costs. A proviso is inserted that no such order shall be made against Government or any other servant acting on behalf of the Government. In my opinion it amounts to discrimination. If cost could be awarded against a private individual and if in the opinion of the court that has to be done, equally so it should be made applicable if the court feels that the cost has to be awarded against Government or a servant acting on behalf of Government. So in my opinion this proviso amounts to discrimination between a private individual and the Government when they must be placed on equal footing before the court. Therefore I submit the proviso must go in order to give equal opportunities to one and all.

Sri M. V. RAMA RAO.—This section 476 and the other sections 476 A, B and C come under Chapter 35 of the Code of Criminal Procedure which makes provisions for proceedings in the case of certain offences in relation to administration of justice. From a reading of these sections it will be clear that the complaints have to be lodged before a Magistrate's court at the instance of other courts, civil, revenue or criminal, for offences which have taken place in relation to administration of justice. Therefore, these proceedings would be associated with the administration of justice of the State and therefore it would not be in public interest to make a provision that the State seeking to administer justice and to prosecute the concerned persons in respect of offences which may have occurred in relation to administration of justice where complaints have been lodged before courts at the instance of a civil, revenue or criminal court, should be made to pay costs. This would not be a reasonable provision. As pointed out earlier when Sri Patil referred to this clause, such costs would have to be paid out of the tax-payers' money and it would not be right.

Mr. SPEAKER.—The question is:

“That the proviso to the proposed section 476 C shall be deleted.”

The amendment was negatived.

Mr. SPEAKER.—The question is:

“That clauses 50 to 63 both inclusive stand part of the Bill”.

The motion was adopted.

Clauses 50 to 63 were added to the Bill.

CLAUSE 64.

Sri G. V. GOWDA.—I beg to move:

“That in clause 64 in Part IV, the proposed item “8 (a)” shall be deleted.”

14TH APRIL 1965

Mr. SPEAKER.—Amendment moved

“That in clause 64 in part IV the proposed item “8(a)” shall be deleted.”

Sri G. V. GOWDA.—Sir, item 8 (a) deals with the power of Taluk Magistrates. Therein the power to record statements and confessions during a police investigation under section 174 is also included. Hitherto even Tahsildars were specially empowered to record confession statements, but otherwise only the District Magistrate or the Sub-Divisional Magistrate of the First Class used to record confession statement under section 174. Now this is sought to be extended even as an ordinary power to the Taluk Magistrate. The point is whether this is in the interest of justice. The Taluk Magistrate may not be well-versed particularly in the matter of recording confession statements under section 174 and that may go against the very accused. There are several cases where confessions recorded incorrectly have resulted in dismissal. That is why in the interest of the State itself this power should not be vested as an ordinary power in the Taluk Magistrate. Where there is need, they may be specially empowered and this should not be an ordinary power of the Taluk Magistrate. Therefore, I have moved this amendment.

Sri M. V. RAMA RAO.—The hon'ble member will see that an amendment has already been effected by clause 29 to sub-section (1) of section 164 so as to empower any Sub-Divisional Magistrate to exercise power under that sub-section. The Schedule merely enumerates the ordinary power of the Sub-Divisional Magistrate and therefore what has already been provided for by clause 29 of the Bill as already carried by the House would be sought to be negated by seeking to delete it from the Schedule. Therefore, it is not possible to accept this amendment.

Mr. SPEAKER.—The question is:

“That in clause 64 in Part IV, the proposed item “8 (a)” shall be deleted”.

The amendment was negatived.

Mr. SPEAKER.—The question is:

“That clauses 64 to 67, both inclusive, stand part of the Bill.”

The motion was adopted.

Clauses 64 to 67, both inclusive, were added to the Bill.

Mr. SPEAKER.—The question is:

“That Schedule under clause 67, stand part of the Bill.”

The motion was adopted.

The Schedule was added to the Bill.

Mr. SPEAKER.—The question is :

“That clause 1, the title, and the preamble, stand part of the Bill.”

The motion was adopted.

Clause 1, the title and the preamble were added to the Bill.

Motion to pass.

Sri M. V. RAMA RAO.—I beg to move :

“That the Code of Criminal Procedure (Mysore Amendment) Bill, 1965, be passed.”

Mr. SPEAKER.—The question is :

“That the Code of Criminal Procedure (Mysore Amendment) Bill 1965, be passed.

The motion was adopted.

BUDGET ESTIMATES OF THE MYSORE STATE ELECTRICITY BOARD FOR 1965-66

Mr. SPEAKER.—We will resume the debate on the Financial Statement of the Mysore State Electricity Board. The Hon'ble Member Sri Anna Rao will commence.

Sri H. R. KESHAVAMURTHY (Gandasi).—Sir, we are not in a position to get copies of Electricity Supply Rules, 1957. Even in the Library the copies are not available.

Mr. SPEAKER.—The Hon'ble member could have very well brought it to my notice earlier. I will try to get copies now.

†Sri ANNARAO GANAMUKHI (Afzalpur).—Mr. Speaker, I was speaking about the tariff rates which are going to be revised by sanction of the Government. In August 1962, the Board has already revised the tariff rates and not only uniformity has been brought about in regard to thermal power but hydel power. Now again to suggest that the rates will be revised and nearly 4 crores would be realised by of revision of rates, seems to be a proposal which has to be very seriously considered by the Government. Every taxation proposal comes before the Assembly but this is not a taxation measure, as it is a rate which has to be paid by the consuming public. So it is directly imposed by the Board, perhaps with the concurrence of the Government. Therefore, this has to be considered before any revision is done. I was already stating that there is an apprehension also about the uniformity of rates being brought about when the regional grid will commence operation from June. We in Mysore are producing power at cheaper rates whereas the power produced in Madras, Andhra and Kerala are higher as they happen to produce mostly thermal power. We see from the income statement that